



KLAMATH-SISKIYOU WILDLANDS CENTER, *ET AL.*

187 IBLA 287

Decided March 31, 2016



United States Department of the Interior  
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Interior Board of Land Appeals  
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KLAMATH-SISKIYOU WILDLANDS CENTER, *ET AL.*

IBLA 2016-111

Decided March 31, 2016

Appeal from a decision of the Field Manager, Butte Falls Resource Area, Medford (Oregon) District Office, Bureau of Land Management, denying a protest to a forest management decision. DOI-BLM-OR-M050-2014-0001-EA.

Affirmed; petition for stay denied as moot.

1. Appeals: Burden of Proof -- Rules of Practice: Appeals:  
Burden of Proof -- Rules of Practice: Appeals: Protests

The Board has often held an appellant has not satisfied the requirement to affirmatively demonstrate error in the decision on appeal when the appellant has merely reiterated the arguments considered by the decisionmaker below, as if there were no decision addressing those points. An appellant cannot prevail simply by repeating the arguments made in comments or in a protest. In such cases, the Board may affirm BLM's decision in summary fashion. When appellants have filed a protest based on alleged NEPA violations, but BLM thoroughly discussed and answered the protest, and the appeal to the Board does not analyze how BLM erred in its response to the protest, the Board will summarily affirm the decision being appealed.

APPEARANCES: George Sexton, Ashland, Oregon, for Klamath-Siskiyou Wildlands Center; Nick Cady, Esq., Eugene, Oregon, for Cascadia Wildlands; Doug Heiken, Eugene, Oregon, for Oregon Wild; Teresa Trulock, Butte Falls Resource Area, Medford (Oregon) District Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Klamath-Siskiyou Wildlands Center, Cascadia Wildlands, and Oregon Wild (appellants) appeal from and petition to stay the effect of a February 23, 2016, Decision (the Decision) of the Field Manager, Butte Falls Resource Area, Medford

(Oregon) District Office, Bureau of Land Management (BLM), denying appellants' protest of BLM's June 19, 2015, decision record (2015 DR).

### *Background*

In the 2015 DR, BLM selected forest management actions for the Double Bowen Forest Management Project (Project). BLM considered environmental impacts of the Project in its Environmental Assessment (EA) (DOI-BLM-OR-M050-2014-0001-EA) and issued a Finding of No Significant Impact (FONSI).<sup>1</sup> On July 8, 2015, appellants filed a protest to the 2015 DR, including the FONSI. On February 23, 2016, in the Decision on appeal, BLM thoroughly addressed each of appellants' claims, concluded it had not erred in the 2015 DR, and therefore denied their protest. By the Decision denying the protest, BLM provided a lengthy response to arguments appellants raised in their protest.

On March 11, 2016, appellants timely appealed and petitioned for stay from the Decision, by filing a combined Notice of Appeal, Statement of Reasons, and Request for Stay (SOR). On March 22, 2016, BLM filed a response opposing the petition for stay (BLM Response) and the case file. BLM argues, *inter alia*, that appellants merely reiterate arguments they previously made in their protest of the 2015 DR, without demonstrating any error in the Decision denying the protest. BLM Response at 13-15.

### *Analysis*

[1] The Board has often held an appellant has not satisfied the requirement to affirmatively demonstrate error in the decision on appeal when the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision . . . addressing those points." *Powder River Basin Resource Council*, 185 IBLA 262, 266 (2015) (quoting *In Re Mill Creek Salvage Timber Sale*, 121 IBLA 360, 362 (1991); *Shell Offshore, Inc.*, 116 IBLA 246, 250 (1990)). An appellant cannot prevail simply by repeating the arguments made in comments or in a protest. *Id.* (citing *Western Watersheds Project*, 184 IBLA 106, 122 (2013); *Mill Creek*, 121 IBLA at 362). In such cases, the Board may affirm BLM's decision in summary fashion. *Id.* (citing *Western Watersheds Project*, 183 IBLA 297, 316 (2013); *Powder River Basin Resource Council*, 183 IBLA 83, 90 (2012); *In Re North Trail Timber Sale*, 169 IBLA 258, 261-62 (2006)). For instance, when appellants have filed a protest based on alleged NEPA violations, but BLM thoroughly discussed and answered the protest, and the appeal to the Board does not analyze how BLM erred in its response to the protest, the

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<sup>1</sup> BLM issued the EA and FONSI pursuant to regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4375 (2012). See, e.g., 40 C.F.R. § 1501.4(b); 43 C.F.R. § 46.300.

Board will summarily affirm the decision being appealed. *See, e.g., Powder River Basin Resource Council*, 185 IBLA at 266.

In the Decision on appeal, BLM issued a comprehensive response to appellants' protest of the 2015 DR, which was based on an EA. In their SOR before the Board, appellants present the same lengthy arguments, alleging NEPA violations and challenging the sufficiency of the EA, which they raised in their protest. *See* SOR at 9-26. As noted, BLM thoroughly addressed each of the claims in its protest decision. On appeal, BLM provided a table, with document and page citations, identifying the 6 issues appellants raised in their protest and comments as well as in the appeal before the Board, and indicated where in the Decision BLM responded to those issues. BLM Response at 15, Table 1 (citing Case File # C06 (Comments); Protest; Decision; SOR).

Having examined appellants' arguments, the pleadings of the parties in this appeal, and the administrative record, the Board concludes BLM is correct. Nowhere in the SOR do appellants analyze how BLM erred in its response to the protest. Appellants "merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision . . . addressing those points." *Powder River Basin Resource Council*, 185 IBLA at 266. Appellants have not shown, by a preponderance of the evidence, that BLM erred in denying their protest of the 2015 DR.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Decision and denies the petition for stay as moot.

\_\_\_\_\_/s/  
Christina S. Kalavritinos  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James K. Jackson  
Administrative Judge